



January 12, 2000

Mr. Kevin McCalla  
Director, General Law Division  
Texas Natural Resources and Conservation Commission  
P.O. Box 13087  
Austin, Texas 78711-3087

OR2000-0125

Dear Mr. McCalla:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 131031.

The Texas Natural Resource Conservation Commission (the "commission") received a request for four categories of information relating to Anglo Metal, Inc. You indicate that you have released some information in response to this request, but seek to withhold other responsive information. You contend that the information that you seek to withhold is excepted from public disclosure by sections 552.107(a) and 552.111 of the Government Code. You advise this office that the Attorney General represents the commission in a bankruptcy proceeding against Anglo metal, and that the subject correspondence is related to that representation. You have described the roles of the parties to this correspondence. You have supplied a representative sample of the subject information to this office for review.<sup>1</sup> We have considered the exceptions you raise and the submitted information.

Section 552.107(1) excepts information from disclosure if it is information that the attorney general or an attorney of a political subdivision is prohibited from disclosing because of a duty to the client under the Texas Rules of Civil Evidence, the Texas Rules of Criminal Evidence, or the Texas Disciplinary Rules of Professional Conduct. Section 552.107 may except from disclosure notes in an attorney's file if they contain confidences of the client or reveal the opinions, advice, or recommendations that have been made or will be made to the client or associated attorneys. Open Records Decision No. 574 at 6 (1990). We are of the opinion that communications between attorneys of the various divisions of the Office of the Attorney General, including the Attorney General, when related to those attorneys' requests for or rendition of legal advice, necessarily reveal opinion, advice or recommendations of

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<sup>1</sup>We assume that the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. See Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

those attorney's that have or will be made to the client or associated attorneys. Therefore all such communications may be withheld under section 552.107(1) of the Government Code.

We note, however, that you have included documents which are communications between individuals who are not attorneys and do not reveal communications to attorneys. This information is not privileged and may not be withheld under section 552.107 of the Government Code. We have marked the information which may be withheld under section 552.107 of the Government Code.

Section 552.111 of the Government Code excepts from required public disclosure interagency and intra-agency memoranda and letters, but only to the extent that they contain advice, opinion, or recommendation intended for use in the entity's policymaking process. Open Records Decision No. 615 at 5 (1993). The purpose of this section is "to protect from public disclosure advice and opinions *on policy matters* and to encourage frank and open discussion within the agency in connection with its decision-making processes." *Austin v. City of San Antonio*, 630 S.W.2d 391, 394 (Tex. App.--San Antonio 1982, writ ref'd n.r.e.) (emphasis added). However, an agency's policymaking functions do not encompass internal administrative or personnel matters, as disclosure of information relating to such matters will not inhibit free discussion among agency personnel as to policy issues. Open Records Decision No. 615 at 5-6 (1993). From our review of the submitted materials we conclude that most of the communications between non-attorneys was not directed at policy decision making, but rather at the administrative function of the commission. We have marked that portion of the submitted materials which may be withheld under section 552.111.

The submitted materials include pleadings and documents which are apparently drafts of documents intended to be filed with the court. Section 552.022 of the Government Code specifies several categories of information that are not excepted from required disclosure unless they "are expressly confidential under other law." One such category is information that is also contained in a public court record. Gov't Code 552.022(a)(17). As the respective materials are not made confidential by law, if the information in these documents is also in a public court record, that information must be released.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days.

*Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



Michael J. Burns  
Assistant Attorney General  
Open Records Division

MJB/nc

Ref: ID# 131031

cc: Mr. Robert Renbarger  
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(w/o enclosures)